
ENGROSSED SUBSTITUTE SENATE BILL 5742

State of Washington

58th Legislature

2003 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Honeyford, Benton and Esser)

READ FIRST TIME 03/05/03.

1 AN ACT Relating to procedures for rehiring retirees of the public
2 employees' retirement system plan 1 and the teachers' retirement system
3 plan 1; amending RCW 41.32.010, 41.32.570, 41.40.010, and 41.40.037;
4 creating a new section; and repealing 2001 c 317 s 1.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 41.32.010 and 1997 c 254 s 3 are each amended to read
7 as follows:

8 As used in this chapter, unless a different meaning is plainly
9 required by the context:

10 (1)(a) "Accumulated contributions" for plan 1 members, means the
11 sum of all regular annuity contributions and, except for the purpose of
12 withdrawal at the time of retirement, any amount paid under RCW
13 41.50.165(2) with regular interest thereon.

14 (b) "Accumulated contributions" for plan 2 members, means the sum
15 of all contributions standing to the credit of a member in the member's
16 individual account, including any amount paid under RCW 41.50.165(2),
17 together with the regular interest thereon.

18 (2) "Actuarial equivalent" means a benefit of equal value when

1 computed upon the basis of such mortality tables and regulations as
2 shall be adopted by the director and regular interest.

3 (3) "Annuity" means the moneys payable per year during life by
4 reason of accumulated contributions of a member.

5 (4) "Member reserve" means the fund in which all of the accumulated
6 contributions of members are held.

7 (5)(a) "Beneficiary" for plan 1 members, means any person in
8 receipt of a retirement allowance or other benefit provided by this
9 chapter.

10 (b) "Beneficiary" for plan 2 and plan 3 members, means any person
11 in receipt of a retirement allowance or other benefit provided by this
12 chapter resulting from service rendered to an employer by another
13 person.

14 (6) "Contract" means any agreement for service and compensation
15 between a member and an employer.

16 (7) "Creditable service" means membership service plus prior
17 service for which credit is allowable. This subsection shall apply
18 only to plan 1 members.

19 (8) "Dependent" means receiving one-half or more of support from a
20 member.

21 (9) "Disability allowance" means monthly payments during
22 disability. This subsection shall apply only to plan 1 members.

23 (10)(a) "Earnable compensation" for plan 1 members, means:

24 (i) All salaries and wages paid by an employer to an employee
25 member of the retirement system for personal services rendered during
26 a fiscal year. In all cases where compensation includes maintenance
27 the employer shall fix the value of that part of the compensation not
28 paid in money.

29 (ii) "Earnable compensation" for plan 1 members also includes the
30 following actual or imputed payments, which are not paid for personal
31 services:

32 (A) Retroactive payments to an individual by an employer on
33 reinstatement of the employee in a position, or payments by an employer
34 to an individual in lieu of reinstatement in a position which are
35 awarded or granted as the equivalent of the salary or wages which the
36 individual would have earned during a payroll period shall be
37 considered earnable compensation and the individual shall receive the
38 equivalent service credit.

1 (B) If a leave of absence, without pay, is taken by a member for
2 the purpose of serving as a member of the state legislature, and such
3 member has served in the legislature five or more years, the salary
4 which would have been received for the position from which the leave of
5 absence was taken shall be considered as compensation earnable if the
6 employee's contribution thereon is paid by the employee. In addition,
7 where a member has been a member of the state legislature for five or
8 more years, earnable compensation for the member's two highest
9 compensated consecutive years of service shall include a sum not to
10 exceed thirty-six hundred dollars for each of such two consecutive
11 years, regardless of whether or not legislative service was rendered
12 during those two years.

13 (iii) For members employed less than full time under written
14 contract with a school district, or community college district, in an
15 instructional position, for which the member receives service credit of
16 less than one year in all of the years used to determine the earnable
17 compensation used for computing benefits due under RCW 41.32.497,
18 41.32.498, and 41.32.520, the member may elect to have earnable
19 compensation defined as provided in RCW 41.32.345. For the purposes of
20 this subsection, the term "instructional position" means a position in
21 which more than seventy-five percent of the member's time is spent as
22 a classroom instructor (including office hours), a librarian, or a
23 counselor. Earnable compensation shall be so defined only for the
24 purpose of the calculation of retirement benefits and only as necessary
25 to insure that members who receive fractional service credit under RCW
26 41.32.270 receive benefits proportional to those received by members
27 who have received full-time service credit.

28 (iv) "Earnable compensation" does not include:

29 (A) Remuneration for unused sick leave authorized under RCW
30 41.04.340, 28A.400.210, or 28A.310.490;

31 (B) Remuneration for unused annual leave in excess of thirty days
32 as authorized by RCW 43.01.044 and 43.01.041.

33 (b) "Earnable compensation" for plan 2 and plan 3 members, means
34 salaries or wages earned by a member during a payroll period for
35 personal services, including overtime payments, and shall include wages
36 and salaries deferred under provisions established pursuant to sections
37 403(b), 414(h), and 457 of the United States Internal Revenue Code, but

1 shall exclude lump sum payments for deferred annual sick leave, unused
2 accumulated vacation, unused accumulated annual leave, or any form of
3 severance pay.

4 "Earnable compensation" for plan 2 and plan 3 members also includes
5 the following actual or imputed payments which, except in the case of
6 (b)(ii)(B) of this subsection, are not paid for personal services:

7 (i) Retroactive payments to an individual by an employer on
8 reinstatement of the employee in a position or payments by an employer
9 to an individual in lieu of reinstatement in a position which are
10 awarded or granted as the equivalent of the salary or wages which the
11 individual would have earned during a payroll period shall be
12 considered earnable compensation, to the extent provided above, and the
13 individual shall receive the equivalent service credit.

14 (ii) In any year in which a member serves in the legislature the
15 member shall have the option of having such member's earnable
16 compensation be the greater of:

17 (A) The earnable compensation the member would have received had
18 such member not served in the legislature; or

19 (B) Such member's actual earnable compensation received for
20 teaching and legislative service combined. Any additional
21 contributions to the retirement system required because compensation
22 earnable under (b)(ii)(A) of this subsection is greater than
23 compensation earnable under (b)(ii)(B) of this subsection shall be paid
24 by the member for both member and employer contributions.

25 (11) "Employer" means the state of Washington, the school district,
26 or any agency of the state of Washington by which the member is paid.

27 (12) "Fiscal year" means a year which begins July 1st and ends June
28 30th of the following year.

29 (13) "Former state fund" means the state retirement fund in
30 operation for teachers under chapter 187, Laws of 1923, as amended.

31 (14) "Local fund" means any of the local retirement funds for
32 teachers operated in any school district in accordance with the
33 provisions of chapter 163, Laws of 1917 as amended.

34 (15) "Member" means any teacher included in the membership of the
35 retirement system. Also, any other employee of the public schools who,
36 on July 1, 1947, had not elected to be exempt from membership and who,
37 prior to that date, had by an authorized payroll deduction, contributed
38 to the member reserve.

1 (16) "Membership service" means service rendered subsequent to the
2 first day of eligibility of a person to membership in the retirement
3 system: PROVIDED, That where a member is employed by two or more
4 employers the individual shall receive no more than one service credit
5 month during any calendar month in which multiple service is rendered.
6 The provisions of this subsection shall apply only to plan 1 members.

7 (17) "Pension" means the moneys payable per year during life from
8 the pension reserve.

9 (18) "Pension reserve" is a fund in which shall be accumulated an
10 actuarial reserve adequate to meet present and future pension
11 liabilities of the system and from which all pension obligations are to
12 be paid.

13 (19) "Prior service" means service rendered prior to the first date
14 of eligibility to membership in the retirement system for which credit
15 is allowable. The provisions of this subsection shall apply only to
16 plan 1 members.

17 (20) "Prior service contributions" means contributions made by a
18 member to secure credit for prior service. The provisions of this
19 subsection shall apply only to plan 1 members.

20 (21) "Public school" means any institution or activity operated by
21 the state of Washington or any instrumentality or political subdivision
22 thereof employing teachers, except the University of Washington and
23 Washington State University.

24 (22) "Regular contributions" means the amounts required to be
25 deducted from the compensation of a member and credited to the member's
26 individual account in the member reserve. This subsection shall apply
27 only to plan 1 members.

28 (23) "Regular interest" means such rate as the director may
29 determine.

30 (24)(a) "Retirement allowance" for plan 1 members, means monthly
31 payments based on the sum of annuity and pension, or any optional
32 benefits payable in lieu thereof.

33 (b) "Retirement allowance" for plan 2 and plan 3 members, means
34 monthly payments to a retiree or beneficiary as provided in this
35 chapter.

36 (25) "Retirement system" means the Washington state teachers'
37 retirement system.

1 (26)(a) "Service" for plan 1 members means the time during which a
2 member has been employed by an employer for compensation.

3 (i) If a member is employed by two or more employers the individual
4 shall receive no more than one service credit month during any calendar
5 month in which multiple service is rendered.

6 (ii) As authorized by RCW 28A.400.300, up to forty-five days of
7 sick leave may be creditable as service solely for the purpose of
8 determining eligibility to retire under RCW 41.32.470.

9 (iii) As authorized in RCW 41.32.065, service earned in an out-of-
10 state retirement system that covers teachers in public schools may be
11 applied solely for the purpose of determining eligibility to retire
12 under RCW 41.32.470.

13 (b) "Service" for plan 2 and plan 3 members, means periods of
14 employment by a member for one or more employers for which earnable
15 compensation is earned subject to the following conditions:

16 (i) A member employed in an eligible position or as a substitute
17 shall receive one service credit month for each month of September
18 through August of the following year if he or she earns earnable
19 compensation for eight hundred ten or more hours during that period and
20 is employed during nine of those months, except that a member may not
21 receive credit for any period prior to the member's employment in an
22 eligible position except as provided in RCW 41.32.812 and 41.50.132;

23 (ii) If a member is employed either in an eligible position or as
24 a substitute teacher for nine months of the twelve month period between
25 September through August of the following year but earns earnable
26 compensation for less than eight hundred ten hours but for at least six
27 hundred thirty hours, he or she will receive one-half of a service
28 credit month for each month of the twelve month period;

29 (iii) All other members in an eligible position or as a substitute
30 teacher shall receive service credit as follows:

31 (A) A service credit month is earned in those calendar months where
32 earnable compensation is earned for ninety or more hours;

33 (B) A half-service credit month is earned in those calendar months
34 where earnable compensation is earned for at least seventy hours but
35 less than ninety hours; and

36 (C) A quarter-service credit month is earned in those calendar
37 months where earnable compensation is earned for less than seventy
38 hours.

1 (iv) Any person who is a member of the teachers' retirement system
2 and who is elected or appointed to a state elective position may
3 continue to be a member of the retirement system and continue to
4 receive a service credit month for each of the months in a state
5 elective position by making the required member contributions.

6 (v) When an individual is employed by two or more employers the
7 individual shall only receive one month's service credit during any
8 calendar month in which multiple service for ninety or more hours is
9 rendered.

10 (vi) As authorized by RCW 28A.400.300, up to forty-five days of
11 sick leave may be creditable as service solely for the purpose of
12 determining eligibility to retire under RCW 41.32.470. For purposes of
13 plan 2 and plan 3 "forty-five days" as used in RCW 28A.400.300 is equal
14 to two service credit months. Use of less than forty-five days of sick
15 leave is creditable as allowed under this subsection as follows:

16 (A) Less than eleven days equals one-quarter service credit month;

17 (B) Eleven or more days but less than twenty-two days equals one-
18 half service credit month;

19 (C) Twenty-two days equals one service credit month;

20 (D) More than twenty-two days but less than thirty-three days
21 equals one and one-quarter service credit month;

22 (E) Thirty-three or more days but less than forty-five days equals
23 one and one-half service credit month.

24 (vii) As authorized in RCW 41.32.065, service earned in an out-of-
25 state retirement system that covers teachers in public schools may be
26 applied solely for the purpose of determining eligibility to retire
27 under RCW 41.32.470.

28 (viii) The department shall adopt rules implementing this
29 subsection.

30 (27) "Service credit year" means an accumulation of months of
31 service credit which is equal to one when divided by twelve.

32 (28) "Service credit month" means a full service credit month or an
33 accumulation of partial service credit months that are equal to one.

34 (29) "Teacher" means any person qualified to teach who is engaged
35 by a public school in an instructional, administrative, or supervisory
36 capacity. The term includes state, educational service district, and
37 school district superintendents and their assistants and all employees
38 certificated by the superintendent of public instruction; and in

1 addition thereto any full time school doctor who is employed by a
2 public school and renders service of an instructional or educational
3 nature.

4 (30) "Average final compensation" for plan 2 and plan 3 members,
5 means the member's average earnable compensation of the highest
6 consecutive sixty service credit months prior to such member's
7 retirement, termination, or death. Periods constituting authorized
8 leaves of absence may not be used in the calculation of average final
9 compensation except under RCW 41.32.810(2).

10 (31) "Retiree" means any person who has begun accruing a retirement
11 allowance or other benefit provided by this chapter resulting from
12 service rendered to an employer while a member.

13 (32) "Department" means the department of retirement systems
14 created in chapter 41.50 RCW.

15 (33) "Director" means the director of the department.

16 (34) "State elective position" means any position held by any
17 person elected or appointed to statewide office or elected or appointed
18 as a member of the legislature.

19 (35) "State actuary" or "actuary" means the person appointed
20 pursuant to RCW 44.44.010(2).

21 (36) "Substitute teacher" means:

22 (a) A teacher who is hired by an employer to work as a temporary
23 teacher, except for teachers who are annual contract employees of an
24 employer and are guaranteed a minimum number of hours; or

25 (b) Teachers who either (i) work in ineligible positions for more
26 than one employer or (ii) work in an ineligible position or positions
27 together with an eligible position.

28 (37)(a) "Eligible position" for plan 2 members from June 7, 1990,
29 through September 1, 1991, means a position which normally requires two
30 or more uninterrupted months of creditable service during September
31 through August of the following year.

32 (b) "Eligible position" for plan 2 and plan 3 on and after
33 September 1, 1991, means a position that, as defined by the employer,
34 normally requires five or more months of at least seventy hours of
35 earnable compensation during September through August of the following
36 year.

37 (c) For purposes of this chapter an employer shall not define

1 "position" in such a manner that an employee's monthly work for that
2 employer is divided into more than one position.

3 (d) The elected position of the superintendent of public
4 instruction is an eligible position.

5 (38) "Plan 1" means the teachers' retirement system, plan 1
6 providing the benefits and funding provisions covering persons who
7 first became members of the system prior to October 1, 1977.

8 (39) "Plan 2" means the teachers' retirement system, plan 2
9 providing the benefits and funding provisions covering persons who
10 first became members of the system on and after October 1, 1977, and
11 prior to July 1, 1996.

12 (40) "Plan 3" means the teachers' retirement system, plan 3
13 providing the benefits and funding provisions covering persons who
14 first become members of the system on and after July 1, 1996, or who
15 transfer under RCW 41.32.817.

16 (41) "Index" means, for any calendar year, that year's annual
17 average consumer price index, Seattle, Washington area, for urban wage
18 earners and clerical workers, all items compiled by the bureau of labor
19 statistics, United States department of labor.

20 (42) "Index A" means the index for the year prior to the
21 determination of a postretirement adjustment.

22 (43) "Index B" means the index for the year prior to index A.

23 (44) "Index year" means the earliest calendar year in which the
24 index is more than sixty percent of index A.

25 (45) "Adjustment ratio" means the value of index A divided by index
26 B.

27 (46) "Annual increase" means, initially, fifty-nine cents per month
28 per year of service which amount shall be increased each July 1st by
29 three percent, rounded to the nearest cent.

30 (47) "Member account" or "member's account" for purposes of plan 3
31 means the sum of the contributions and earnings on behalf of the member
32 in the defined contribution portion of plan 3.

33 (48) "Separation from service or employment" occurs when a person
34 has terminated all employment with an employer. Separation from
35 service or employment does not occur, and if claimed by an employer or
36 employee is a violation of RCW 41.32.055, when an employee and employer
37 have a written or oral agreement to resume employment with the same
38 employer following termination.

1 (49) "Employed" or "employee" means a person who is providing
2 services for compensation to an employer, unless the person is free
3 from the employer's direction and control over the performance of work.
4 The department shall adopt rules and interpret this subsection
5 consistent with common law.

6 **Sec. 2.** RCW 41.32.570 and 2001 2nd sp.s. c 10 s 3 are each amended
7 to read as follows:

8 (1)(a) If a retiree enters employment with an employer sooner than
9 one calendar month after his or her accrual date, the retiree's monthly
10 retirement allowance will be reduced by five and one-half percent for
11 every seven hours worked during that month. This reduction will be
12 applied each month until the retiree remains absent from employment
13 with an employer for one full calendar month.

14 (b) The benefit reduction provided in (a) of this subsection will
15 accrue for a maximum of one hundred forty hours per month. Any monthly
16 benefit reduction over one hundred percent will be applied to the
17 benefit the retiree is eligible to receive in subsequent months.

18 (2) Except as provided in subsection (3) of this section, any
19 retired teacher or retired administrator who enters service in any
20 public educational institution in Washington state ((and who has
21 satisfied the break in employment requirement of subsection (1) of this
22 section)) at least one calendar month after his or her accrual date
23 shall cease to receive pension payments while engaged in such service,
24 after the retiree has rendered service for more than ((one thousand
25 five hundred)) eight hundred sixty-seven hours in a school year.

26 (3) Any retired teacher or retired administrator who enters service
27 in any public educational institution in Washington state at least
28 forty-five days for certificated instructional staff, or at least sixty
29 days for other staff, after his or her date of separation and:

30 (a) Is hired into a position for which the school board has (i)
31 made a written declaration by April 1st of the prior school year that
32 a shortage of well-qualified applicants are available; or (ii) made a
33 written declaration that a vacancy must be filled on an emergency
34 basis;

35 (b) Is hired through the established process for the position with
36 the approval of the school board of the prospective employer;

1 (c) The employer retains records of the procedures followed and the
2 decisions made in hiring the retired teacher or retired administrator
3 and provides those records in the event of an audit; and

4 (d) The employee has not already rendered a cumulative total of
5 more than one thousand nine hundred hours of service while receiving
6 pension payments, beyond an annual threshold of eight hundred sixty-
7 seven hours;

8 shall cease to receive pension payments while engaged in that service
9 after the retiree has rendered service for more than one thousand five
10 hundred hours in a school year. The one thousand nine hundred hour
11 cumulative total under this subsection applies prospectively to those
12 retiring after the effective date of this act and retroactively to
13 those who retired prior to the effective date of this act, and shall be
14 calculated from the date of retirement.

15 (4) When a retired teacher or administrator renders service beyond
16 eight hundred sixty-seven hours, the department shall collect from the
17 employer the applicable employer retirement contributions for the
18 entire duration of the member's employment during that fiscal year.

19 ~~((+3))~~ (5) The department shall collect and provide the state
20 actuary with information relevant to the use of this section for the
21 joint committee on pension policy.

22 ~~((+4))~~ (6) The legislature reserves the right to amend or repeal
23 this section in the future and no member or beneficiary has a
24 contractual right to be employed for more than ~~((five hundred twenty-~~
25 ~~five)) eight hundred sixty-seven~~ hours per year without a reduction of
26 his or her pension.

27 NEW SECTION. Sec. 3. 2001 c 317 s 1 is repealed.

28 **Sec. 4.** RCW 41.40.010 and 2000 c 247 s 102 are each amended to
29 read as follows:

30 As used in this chapter, unless a different meaning is plainly
31 required by the context:

32 (1) "Retirement system" means the public employees' retirement
33 system provided for in this chapter.

34 (2) "Department" means the department of retirement systems created
35 in chapter 41.50 RCW.

1 (3) "State treasurer" means the treasurer of the state of
2 Washington.

3 (4)(a) "Employer" for plan 1 members, means every branch,
4 department, agency, commission, board, and office of the state, any
5 political subdivision or association of political subdivisions of the
6 state admitted into the retirement system, and legal entities
7 authorized by RCW 35.63.070 and 36.70.060 or chapter 39.34 RCW; and the
8 term shall also include any labor guild, association, or organization
9 the membership of a local lodge or division of which is comprised of at
10 least forty percent employees of an employer (other than such labor
11 guild, association, or organization) within this chapter. The term may
12 also include any city of the first class that has its own retirement
13 system.

14 (b) "Employer" for plan 2 and plan 3 members, means every branch,
15 department, agency, commission, board, and office of the state, and any
16 political subdivision and municipal corporation of the state admitted
17 into the retirement system, including public agencies created pursuant
18 to RCW 35.63.070, 36.70.060, and 39.34.030; except that after August
19 31, 2000, school districts and educational service districts will no
20 longer be employers for the public employees' retirement system plan 2.

21 (5) "Member" means any employee included in the membership of the
22 retirement system, as provided for in RCW 41.40.023. RCW 41.26.045
23 does not prohibit a person otherwise eligible for membership in the
24 retirement system from establishing such membership effective when he
25 or she first entered an eligible position.

26 (6) "Original member" of this retirement system means:

27 (a) Any person who became a member of the system prior to April 1,
28 1949;

29 (b) Any person who becomes a member through the admission of an
30 employer into the retirement system on and after April 1, 1949, and
31 prior to April 1, 1951;

32 (c) Any person who first becomes a member by securing employment
33 with an employer prior to April 1, 1951, provided the member has
34 rendered at least one or more years of service to any employer prior to
35 October 1, 1947;

36 (d) Any person who first becomes a member through the admission of
37 an employer into the retirement system on or after April 1, 1951,

1 provided, such person has been in the regular employ of the employer
2 for at least six months of the twelve-month period preceding the said
3 admission date;

4 (e) Any member who has restored all contributions that may have
5 been withdrawn as provided by RCW 41.40.150 and who on the effective
6 date of the individual's retirement becomes entitled to be credited
7 with ten years or more of membership service except that the provisions
8 relating to the minimum amount of retirement allowance for the member
9 upon retirement at age seventy as found in RCW 41.40.190(4) shall not
10 apply to the member;

11 (f) Any member who has been a contributor under the system for two
12 or more years and who has restored all contributions that may have been
13 withdrawn as provided by RCW 41.40.150 and who on the effective date of
14 the individual's retirement has rendered five or more years of service
15 for the state or any political subdivision prior to the time of the
16 admission of the employer into the system; except that the provisions
17 relating to the minimum amount of retirement allowance for the member
18 upon retirement at age seventy as found in RCW 41.40.190(4) shall not
19 apply to the member.

20 (7) "New member" means a person who becomes a member on or after
21 April 1, 1949, except as otherwise provided in this section.

22 (8)(a) "Compensation earnable" for plan 1 members, means salaries
23 or wages earned during a payroll period for personal services and where
24 the compensation is not all paid in money, maintenance compensation
25 shall be included upon the basis of the schedules established by the
26 member's employer.

27 (i) "Compensation earnable" for plan 1 members also includes the
28 following actual or imputed payments, which are not paid for personal
29 services:

30 (A) Retroactive payments to an individual by an employer on
31 reinstatement of the employee in a position, or payments by an employer
32 to an individual in lieu of reinstatement in a position which are
33 awarded or granted as the equivalent of the salary or wage which the
34 individual would have earned during a payroll period shall be
35 considered compensation earnable and the individual shall receive the
36 equivalent service credit;

37 (B) If a leave of absence is taken by an individual for the purpose
38 of serving in the state legislature, the salary which would have been

1 received for the position from which the leave of absence was taken,
2 shall be considered as compensation earnable if the employee's
3 contribution is paid by the employee and the employer's contribution is
4 paid by the employer or employee;

5 (C) Assault pay only as authorized by RCW 27.04.100, 72.01.045, and
6 72.09.240;

7 (D) Compensation that a member would have received but for a
8 disability occurring in the line of duty only as authorized by RCW
9 41.40.038;

10 (E) Compensation that a member receives due to participation in the
11 leave sharing program only as authorized by RCW 41.04.650 through
12 41.04.670; and

13 (F) Compensation that a member receives for being in standby
14 status. For the purposes of this section, a member is in standby
15 status when not being paid for time actually worked and the employer
16 requires the member to be prepared to report immediately for work, if
17 the need arises, although the need may not arise.

18 (ii) "Compensation earnable" does not include:

19 (A) Remuneration for unused sick leave authorized under RCW
20 41.04.340, 28A.400.210, or 28A.310.490;

21 (B) Remuneration for unused annual leave in excess of thirty days
22 as authorized by RCW 43.01.044 and 43.01.041.

23 (b) "Compensation earnable" for plan 2 and plan 3 members, means
24 salaries or wages earned by a member during a payroll period for
25 personal services, including overtime payments, and shall include wages
26 and salaries deferred under provisions established pursuant to sections
27 403(b), 414(h), and 457 of the United States Internal Revenue Code, but
28 shall exclude nonmoney maintenance compensation and lump sum or other
29 payments for deferred annual sick leave, unused accumulated vacation,
30 unused accumulated annual leave, or any form of severance pay.

31 "Compensation earnable" for plan 2 and plan 3 members also includes
32 the following actual or imputed payments, which are not paid for
33 personal services:

34 (i) Retroactive payments to an individual by an employer on
35 reinstatement of the employee in a position, or payments by an employer
36 to an individual in lieu of reinstatement in a position which are
37 awarded or granted as the equivalent of the salary or wage which the

1 individual would have earned during a payroll period shall be
2 considered compensation earnable to the extent provided above, and the
3 individual shall receive the equivalent service credit;

4 (ii) In any year in which a member serves in the legislature, the
5 member shall have the option of having such member's compensation
6 earnable be the greater of:

7 (A) The compensation earnable the member would have received had
8 such member not served in the legislature; or

9 (B) Such member's actual compensation earnable received for
10 nonlegislative public employment and legislative service combined. Any
11 additional contributions to the retirement system required because
12 compensation earnable under (b)(ii)(A) of this subsection is greater
13 than compensation earnable under (b)(ii)(B) of this subsection shall be
14 paid by the member for both member and employer contributions;

15 (iii) Assault pay only as authorized by RCW 27.04.100, 72.01.045,
16 and 72.09.240;

17 (iv) Compensation that a member would have received but for a
18 disability occurring in the line of duty only as authorized by RCW
19 41.40.038;

20 (v) Compensation that a member receives due to participation in the
21 leave sharing program only as authorized by RCW 41.04.650 through
22 41.04.670; and

23 (vi) Compensation that a member receives for being in standby
24 status. For the purposes of this section, a member is in standby
25 status when not being paid for time actually worked and the employer
26 requires the member to be prepared to report immediately for work, if
27 the need arises, although the need may not arise.

28 (9)(a) "Service" for plan 1 members, except as provided in RCW
29 41.40.088, means periods of employment in an eligible position or
30 positions for one or more employers rendered to any employer for which
31 compensation is paid, and includes time spent in office as an elected
32 or appointed official of an employer. Compensation earnable earned in
33 full time work for seventy hours or more in any given calendar month
34 shall constitute one service credit month except as provided in RCW
35 41.40.088. Compensation earnable earned for less than seventy hours in
36 any calendar month shall constitute one-quarter service credit month of
37 service except as provided in RCW 41.40.088. Only service credit
38 months and one-quarter service credit months shall be counted in the

1 computation of any retirement allowance or other benefit provided for
2 in this chapter. Any fraction of a year of service shall be taken into
3 account in the computation of such retirement allowance or benefits.
4 Time spent in standby status, whether compensated or not, is not
5 service.

6 (i) Service by a state employee officially assigned by the state on
7 a temporary basis to assist another public agency, shall be considered
8 as service as a state employee: PROVIDED, That service to any other
9 public agency shall not be considered service as a state employee if
10 such service has been used to establish benefits in any other public
11 retirement system.

12 (ii) An individual shall receive no more than a total of twelve
13 service credit months of service during any calendar year. If an
14 individual is employed in an eligible position by one or more employers
15 the individual shall receive no more than one service credit month
16 during any calendar month in which multiple service for seventy or more
17 hours is rendered.

18 (iii) A school district employee may count up to forty-five days of
19 sick leave as creditable service solely for the purpose of determining
20 eligibility to retire under RCW 41.40.180 as authorized by RCW
21 28A.400.300. For purposes of plan 1 "forty-five days" as used in RCW
22 28A.400.300 is equal to two service credit months. Use of less than
23 forty-five days of sick leave is creditable as allowed under this
24 subsection as follows:

25 (A) Less than twenty-two days equals one-quarter service credit
26 month;

27 (B) Twenty-two days equals one service credit month;

28 (C) More than twenty-two days but less than forty-five days equals
29 one and one-quarter service credit month.

30 (b) "Service" for plan 2 and plan 3 members, means periods of
31 employment by a member in an eligible position or positions for one or
32 more employers for which compensation earnable is paid. Compensation
33 earnable earned for ninety or more hours in any calendar month shall
34 constitute one service credit month except as provided in RCW
35 41.40.088. Compensation earnable earned for at least seventy hours but
36 less than ninety hours in any calendar month shall constitute one-half
37 service credit month of service. Compensation earnable earned for less

1 than seventy hours in any calendar month shall constitute one-quarter
2 service credit month of service. Time spent in standby status, whether
3 compensated or not, is not service.

4 Any fraction of a year of service shall be taken into account in
5 the computation of such retirement allowance or benefits.

6 (i) Service in any state elective position shall be deemed to be
7 full time service, except that persons serving in state elective
8 positions who are members of the Washington school employees'
9 retirement system, teachers' retirement system, or law enforcement
10 officers' and fire fighters' retirement system at the time of election
11 or appointment to such position may elect to continue membership in the
12 Washington school employees' retirement system, teachers' retirement
13 system, or law enforcement officers' and fire fighters' retirement
14 system.

15 (ii) A member shall receive a total of not more than twelve service
16 credit months of service for such calendar year. If an individual is
17 employed in an eligible position by one or more employers the
18 individual shall receive no more than one service credit month during
19 any calendar month in which multiple service for ninety or more hours
20 is rendered.

21 (iii) Up to forty-five days of sick leave may be creditable as
22 service solely for the purpose of determining eligibility to retire
23 under RCW 41.40.180 as authorized by RCW 28A.400.300. For purposes of
24 plan 2 and plan 3 "forty-five days" as used in RCW 28A.400.300 is equal
25 to two service credit months. Use of less than forty-five days of sick
26 leave is creditable as allowed under this subsection as follows:

27 (A) Less than eleven days equals one-quarter service credit month;

28 (B) Eleven or more days but less than twenty-two days equals one-
29 half service credit month;

30 (C) Twenty-two days equals one service credit month;

31 (D) More than twenty-two days but less than thirty-three days
32 equals one and one-quarter service credit month;

33 (E) Thirty-three or more days but less than forty-five days equals
34 one and one-half service credit month.

35 (10) "Service credit year" means an accumulation of months of
36 service credit which is equal to one when divided by twelve.

37 (11) "Service credit month" means a month or an accumulation of
38 months of service credit which is equal to one.

1 (12) "Prior service" means all service of an original member
2 rendered to any employer prior to October 1, 1947.

3 (13) "Membership service" means:

4 (a) All service rendered, as a member, after October 1, 1947;

5 (b) All service after October 1, 1947, to any employer prior to the
6 time of its admission into the retirement system for which member and
7 employer contributions, plus interest as required by RCW 41.50.125,
8 have been paid under RCW 41.40.056 or 41.40.057;

9 (c) Service not to exceed six consecutive months of probationary
10 service rendered after April 1, 1949, and prior to becoming a member,
11 in the case of any member, upon payment in full by such member of the
12 total amount of the employer's contribution to the retirement fund
13 which would have been required under the law in effect when such
14 probationary service was rendered if the member had been a member
15 during such period, except that the amount of the employer's
16 contribution shall be calculated by the director based on the first
17 month's compensation earnable as a member;

18 (d) Service not to exceed six consecutive months of probationary
19 service, rendered after October 1, 1947, and before April 1, 1949, and
20 prior to becoming a member, in the case of any member, upon payment in
21 full by such member of five percent of such member's salary during said
22 period of probationary service, except that the amount of the
23 employer's contribution shall be calculated by the director based on
24 the first month's compensation earnable as a member.

25 (14)(a) "Beneficiary" for plan 1 members, means any person in
26 receipt of a retirement allowance, pension or other benefit provided by
27 this chapter.

28 (b) "Beneficiary" for plan 2 and plan 3 members, means any person
29 in receipt of a retirement allowance or other benefit provided by this
30 chapter resulting from service rendered to an employer by another
31 person.

32 (15) "Regular interest" means such rate as the director may
33 determine.

34 (16) "Accumulated contributions" means the sum of all contributions
35 standing to the credit of a member in the member's individual account,
36 including any amount paid under RCW 41.50.165(2), together with the
37 regular interest thereon.

1 (17)(a) "Average final compensation" for plan 1 members, means the
2 annual average of the greatest compensation earnable by a member during
3 any consecutive two year period of service credit months for which
4 service credit is allowed; or if the member has less than two years of
5 service credit months then the annual average compensation earnable
6 during the total years of service for which service credit is allowed.

7 (b) "Average final compensation" for plan 2 and plan 3 members,
8 means the member's average compensation earnable of the highest
9 consecutive sixty months of service credit months prior to such
10 member's retirement, termination, or death. Periods constituting
11 authorized leaves of absence may not be used in the calculation of
12 average final compensation except under RCW 41.40.710(2).

13 (18) "Final compensation" means the annual rate of compensation
14 earnable by a member at the time of termination of employment.

15 (19) "Annuity" means payments for life derived from accumulated
16 contributions of a member. All annuities shall be paid in monthly
17 installments.

18 (20) "Pension" means payments for life derived from contributions
19 made by the employer. All pensions shall be paid in monthly
20 installments.

21 (21) "Retirement allowance" means the sum of the annuity and the
22 pension.

23 (22) "Employee" or "employed" means a person who is providing
24 services for compensation to an employer, unless the person is free
25 from the employer's direction and control over the performance of work.
26 The department shall adopt rules and interpret this subsection
27 consistent with common law.

28 (23) "Actuarial equivalent" means a benefit of equal value when
29 computed upon the basis of such mortality and other tables as may be
30 adopted by the director.

31 (24) "Retirement" means withdrawal from active service with a
32 retirement allowance as provided by this chapter.

33 (25) "Eligible position" means:

34 (a) Any position that, as defined by the employer, normally
35 requires five or more months of service a year for which regular
36 compensation for at least seventy hours is earned by the occupant
37 thereof. For purposes of this chapter an employer shall not define

1 "position" in such a manner that an employee's monthly work for that
2 employer is divided into more than one position;

3 (b) Any position occupied by an elected official or person
4 appointed directly by the governor, or appointed by the chief justice
5 of the supreme court under RCW 2.04.240(2) or 2.06.150(2), for which
6 compensation is paid.

7 (26) "Ineligible position" means any position which does not
8 conform with the requirements set forth in subsection (25) of this
9 section.

10 (27) "Leave of absence" means the period of time a member is
11 authorized by the employer to be absent from service without being
12 separated from membership.

13 (28) "Totally incapacitated for duty" means total inability to
14 perform the duties of a member's employment or office or any other work
15 for which the member is qualified by training or experience.

16 (29) "Retiree" means any person who has begun accruing a retirement
17 allowance or other benefit provided by this chapter resulting from
18 service rendered to an employer while a member.

19 (30) "Director" means the director of the department.

20 (31) "State elective position" means any position held by any
21 person elected or appointed to statewide office or elected or appointed
22 as a member of the legislature.

23 (32) "State actuary" or "actuary" means the person appointed
24 pursuant to RCW 44.44.010(2).

25 (33) "Plan 1" means the public employees' retirement system, plan
26 1 providing the benefits and funding provisions covering persons who
27 first became members of the system prior to October 1, 1977.

28 (34) "Plan 2" means the public employees' retirement system, plan
29 2 providing the benefits and funding provisions covering persons who
30 first became members of the system on and after October 1, 1977, and
31 are not included in plan 3.

32 (35) "Plan 3" means the public employees' retirement system, plan
33 3 providing the benefits and funding provisions covering persons who:

34 (a) First become a member on or after:

35 (i) March 1, 2002, and are employed by a state agency or institute
36 of higher education and who did not choose to enter plan 2; or

37 (ii) September 1, 2002, and are employed by other than a state

1 agency or institute of higher education and who did not choose to enter
2 plan 2; or

3 (b) Transferred to plan 3 under RCW 41.40.795.

4 (36) "Index" means, for any calendar year, that year's annual
5 average consumer price index, Seattle, Washington area, for urban wage
6 earners and clerical workers, all items, compiled by the bureau of
7 labor statistics, United States department of labor.

8 (37) "Index A" means the index for the year prior to the
9 determination of a postretirement adjustment.

10 (38) "Index B" means the index for the year prior to index A.

11 (39) "Index year" means the earliest calendar year in which the
12 index is more than sixty percent of index A.

13 (40) "Adjustment ratio" means the value of index A divided by index
14 B.

15 (41) "Annual increase" means, initially, fifty-nine cents per month
16 per year of service which amount shall be increased each July 1st by
17 three percent, rounded to the nearest cent.

18 (42) "Separation from service" occurs when a person has terminated
19 all employment with an employer. Separation from service or employment
20 does not occur, and if claimed by an employer or employee is a
21 violation of RCW 41.40.055, when an employee and employer have a
22 written or oral agreement to resume employment with the same employer
23 following termination.

24 (43) "Member account" or "member's account" for purposes of plan 3
25 means the sum of the contributions and earnings on behalf of the member
26 in the defined contribution portion of plan 3.

27 **Sec. 5.** RCW 41.40.037 and 2001 2nd sp.s. c 10 s 4 are each amended
28 to read as follows:

29 (1)(a) If a retiree enters employment with an employer sooner than
30 one calendar month after his or her accrual date, the retiree's monthly
31 retirement allowance will be reduced by five and one-half percent for
32 every eight hours worked during that month. This reduction will be
33 applied each month until the retiree remains absent from employment
34 with an employer for one full calendar month.

35 (b) The benefit reduction provided in (a) of this subsection will
36 accrue for a maximum of one hundred sixty hours per month. Any benefit

1 reduction over one hundred percent will be applied to the benefit the
2 retiree is eligible to receive in subsequent months.

3 ~~(2)(a) A retiree from plan 1 who ((has satisfied the break in~~
4 ~~employment requirement of subsection (1) of this section and who))~~
5 enters employment with an employer at least one calendar month after
6 his or her accrual date may continue to receive pension payments while
7 engaged in such service for up to ~~((one thousand five hundred))~~ eight
8 hundred sixty-seven hours of service in a calendar year without a
9 reduction of pension.

10 (b) A retiree from plan 1 who enters employment with an employer at
11 least sixty days after his or her date of separation and:

12 (i) Is hired through the established process for the position with
13 the approval of the chief executive officer of a state agency employer,
14 school board, the secretary of the senate and the chief clerk of the
15 house of representatives for a legislative agency employer, or
16 according to rules adopted for the rehiring of retired plan 1 members
17 for a local government employer;

18 (ii) The employer retains records of the procedures followed and
19 decisions made in hiring the retiree, and provides those records in the
20 event of an audit; and

21 (iii) The employee has not already rendered a cumulative total of
22 more than one thousand nine hundred hours of service while receiving
23 pension payments, beyond an annual threshold of eight hundred sixty-
24 seven hours;

25 may continue to receive pension payments while engaged in that service
26 for up to one thousand five hundred hours in a calendar year without a
27 reduction of pension. The one thousand nine hundred hour cumulative
28 total under this subsection applies prospectively to those retiring
29 after the effective date of this act and retroactively to those who
30 retired prior to the effective date of this act, and shall be
31 calculated from the date of retirement.

32 (c) When a plan 1 member renders service beyond eight hundred
33 sixty-seven hours, the department shall collect from the employer the
34 applicable employer retirement contributions for the entire duration of
35 the member's employment during that calendar year.

36 ~~((b))~~ (d) A retiree from plan 2 or plan 3 who has satisfied the
37 break in employment requirement of subsection (1) of this section may
38 work up to eight hundred sixty-seven hours in a calendar year in an

1 eligible position, as defined in RCW 41.32.010, 41.35.010, or
2 41.40.010, or as a fire fighter or law enforcement officer, as defined
3 in RCW 41.26.030, without suspension of his or her benefit.

4 (3) If the retiree opts to reestablish membership under RCW
5 41.40.023(12), he or she terminates his or her retirement status and
6 becomes a member. Retirement benefits shall not accrue during the
7 period of membership and the individual shall make contributions and
8 receive membership credit. Such a member shall have the right to again
9 retire if eligible in accordance with RCW 41.40.180. However, if the
10 right to retire is exercised to become effective before the member has
11 rendered two uninterrupted years of service, the retirement formula and
12 survivor options the member had at the time of the member's previous
13 retirement shall be reinstated.

14 (4) The department shall collect and provide the state actuary with
15 information relevant to the use of this section for the joint committee
16 on pension policy.

17 (5) The legislature reserves the right to amend or repeal this
18 section in the future and no member or beneficiary has a contractual
19 right to be employed for more than five months in a calendar year
20 without a reduction of his or her pension.

21 NEW SECTION. **Sec. 6.** The department of retirement systems shall,
22 in consultation with the employment security department, prepare a
23 notice to employers to be included in the established process of
24 informing employers of changes in the retirement systems. This notice
25 will inform employers about the possible unemployment compensation
26 consequences of hiring retirees.

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